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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 Case No. 3527

13 In the Matter of the Accusation Against:

14 JOSE VEGA  
5830 Jones Ave  
Riverside, CA 92505

15 Pharmacy Technician Registration No. TCH  
52827

16 Respondent.  
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**A C C U S A T I O N**

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about January 2, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 52827 to Jose Vega (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on January 31, 2012, unless renewed.  
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4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY PROVISIONS

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 493 of the Code states:

2

1 and the board may inquire into the circumstances surrounding the commission of  
2 the crime in order to fix the degree of discipline or to determine if the conviction is  
3 substantially related to the qualifications, functions, and duties of the licensee in  
4 question.

5 As used in this section, "license" includes "certificate," "permit,"  
6 "authority," and "registration."

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17 9. Section 4060 of the Code states:

18 No person shall possess any controlled substance, except that furnished to a  
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
22 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
23 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
24 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
25 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This  
26 section shall not apply to the possession of any controlled substance by a  
27 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
28 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse  
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
stock of dangerous drugs and devices.

10. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of  
unprofessional conduct or whose license has been procured by fraud or  
misrepresentation or issued by mistake. Unprofessional conduct shall include, but  
is not limited to, any of the following:

....

(j) The violation of any of the statutes of this state, or any other state, or of  
the United States regulating controlled substances and dangerous drugs.

....

(l) The conviction of a crime substantially related to the qualifications,  
functions, and duties of a licensee under this chapter. The record of conviction of  
a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
States Code regulating controlled substances or of a violation of the statutes of this  
state regulating controlled substances or dangerous drugs shall be conclusive  
evidence of unprofessional conduct. In all other cases, the record of conviction  
shall be conclusive evidence only of the fact that the conviction occurred. The

1 board may inquire into the circumstances surrounding the commission of the  
2 crime, in order to fix the degree of discipline or, in the case of a conviction not  
3 involving controlled substances or dangerous drugs, to determine if the conviction  
4 is of an offense substantially related to the qualifications, functions, and duties of a  
5 licensee under this chapter. A plea or verdict of guilty or a conviction following a  
6 plea of nolo contendere is deemed to be a conviction within the meaning of this  
7 provision. The board may take action when the time for appeal has elapsed, or the  
8 judgment of conviction has been affirmed on appeal or when an order granting  
9 probation is made suspending the imposition of sentence, irrespective of a  
10 subsequent order under Section 1203.4 of the Penal Code allowing the person to  
11 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
12 the verdict of guilty, or dismissing the accusation, information, or indictment.

13 . . . .

### 14 REGULATORY PROVISIONS

15 11. California Code of Regulations, title 16, section 1770, states:

16 For the purpose of denial, suspension, or revocation of a personal or facility  
17 license pursuant to Division 1.5 (commencing with Section 475) of the Business  
18 and Professions Code, a crime or act shall be considered substantially related to  
19 the qualifications, functions or duties of a licensee or registrant if to a substantial  
20 degree it evidences present or potential unfitness of a licensee or registrant to  
21 perform the functions authorized by his license or registration in a manner  
22 consistent with the public health, safety, or welfare.

23 12. California Code of Regulations, title 16, section 1769, states:

24 . . . .

25 (b) When considering the suspension or revocation of a facility or a  
26 personal license on the ground that the licensee or the registrant has been  
27 convicted of a crime, the board, in evaluating the rehabilitation of such person and  
28 his present eligibility for a license will consider the following criteria:

- 29 (1) Nature and severity of the act(s) or offense(s).
- 30 (2) Total criminal record.
- 31 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 32 (4) Whether the licensee has complied with all terms of parole, probation,  
33 restitution or any other sanctions lawfully imposed against the licensee.
- 34 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1 c. As a result of his convictions, on or about October 19, 2009, Respondent was  
2 sentenced to 51 months in federal prison, supervised release for 3 years, and ordered to pay an  
3 assessment fee.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct- Violating State Laws Regulating Controlled Substances)**

6 16. Respondent is subject to disciplinary action for unprofessional conduct under section  
7 4301(j) of the Code in that on or about January 14, 2009, Respondent illegally possessed and  
8 imported a controlled substance into California in violation of Code section 4060 and Title 21,  
9 United States Code, Sections 952 and 960, as set forth above in paragraph 15, incorporated herein  
10 by reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct- Failing to Appear in Criminal Proceeding in Missouri)**

13 17. Respondent is subject to disciplinary action for unprofessional conduct under section  
14 4301 of the Code in that he committed acts constituting general unprofessional conduct as  
15 follows.

16 a. On or about March 7, 2008, in a proceeding entitled *United States of America v.*  
17 *Robert Earl Pulte, Jose Luis Vega, et al.*, in the United States District Court, Eastern District of  
18 Missouri, case number 08CR00195, Respondent was charged in a criminal complaint for  
19 violation of Title 21, United States Code, Sections 841(a)(1) and 846, knowingly and  
20 intentionally conspiring to possess with the intent to distribute in excess of one hundred  
21 kilograms of marijuana, a Schedule I Controlled Substance. On or about July 3, 2008, the District  
22 Court granted Respondent's motion to travel for vacation with his family to Anaheim, California,  
23 through July 13, 2008. On or about August 22, 2008, the Court ordered a change of plea hearing  
24 to be heard on August 26, 2008. On or about August 26, 2008, Respondent failed to appear at the  
25 change of plea hearing and a warrant was issued for his arrest.

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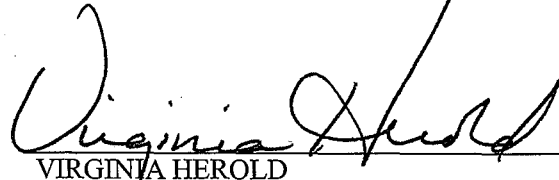
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 52827, issued to Jose Vega;
2. Ordering Jose Vega to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/6/11



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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